IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.538 OF 2006
a/w Civil Application no.776 of 2006

Shri Madhav Krishna Bodke,
(since deceased) through his
legal representatives:
1.Prakash Madhav Bodke and ors. .. Appellants.
Vs
1. Dattaram Haribhau Sanap and ors. .. Respondents.

Mr M.S.Karnik, for the appellants.
Mr S.H.Joshi, for respondent nos 1 to 4.

CORAM : D.B.BHOSALE,J.
DATE : 13.11.2006

PC:

1. Heard the learned counsel for the parties.

2. This appeal is directed against the concurrent findings recorded by the courts below. The appellants are the heirs and legal representatives of the original defendant no.1. They claim right and title in the property on the basis of an agreement of sale dated 28.4.1975 (Exhibit-54) executed by the original defendant no.2. It is clear from the facts that the suit property was leasehold property and deceased defendant no.2 had no right and title to execute the agreement of sale in favour of the deceased defendant no.1. The respondents-plaintiffs are the heirs of defendant no.2. Defendant no. 2 had inherited the suit property from Shivbai. The suit was instituted for possession of the suit property. The only contention advanced by Mr Karnik, learned counsel for the

appellants, was that the suit itself was not maintainable since defendant no.2 was alive, when it was instituted. The plaintiff had no locus to file the suit. I am unable to accept the submission of Mr Karnik. It is clear from the findings recorded by the courts below that the appellants claim right in the suit property on the basis of the agreement dated 28.4.1975 (Exhibit-54) executed by the original defendant no.2. Both the courts below, after having considered the material on record, have declared the said agreement illegal. Insofar as the locus of the respondents-plaintiffs is concerned, that had not been challenged by defendant no.2 and even by the appellants before the courts below. It is not open for the appellants to raise such contention for the first time before this Court. I am satisfied that the case involves no substantial question of law. Keeping that in view and considering the concurrent findings of fact and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal along with the civil application fails and is dismissed as such.

3. Request of the learned counsel for the appellants for stay is rejected.

(D.B.BHOSALE,J.)